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BY: MLG

Dear Madam Secretary

I refer to my telephone conversation today with Mr Steffan Tissa, in which he requested that I forward the following to you.

Below is an email from the Senior Executive Lawyer of the Australian Government Solicitor in response to my request to put in writing what he told me when I sought discovery of all my client's medical records for the purposes of Federal Court proceedings.

I had asked for informal discovery of my client's medical records. He advised that the Department did not have custody of, or access to, them. My client was then and had been for some time in immigration detention. He was diagnosed with major depression and had suicidal ideation (having already tried twice to kill himself). The AGS Lawyer told me that the Department had no medical records and couldn't access them as of right.

In about April this year, I attended a stakeholder forum with senior officers of the Department's Refugee and Humanitarian Branch. I expressed concern about this regime with respect to medical records, not least from the point of view of the Department's duty of care and sensible management practice. It appeared that some of those senior officers were not aware of the regime. However, an officer from the Perth office of the Department confirmed to the forum that it was in fact the case.

I note that the advice below includes that the Department can access a detainee's medical records with that detainee's consent or the consent of their "delegate under the law". That is unsatisfactory for many reasons including that a detainee may not be in a position to give consent, or may give consent too late, and they may not have a delegate under law.

Ultimately, I did obtain my client's medical records from the contracted health service provider, not from the Department.

Please note that in relating this, I do not suggest anything untoward by the Senior Executive Lawyer of AGS, who was simply passing on the instructions of the Department, or the officer of the Perth office of the Department, who has always been of the utmost assistance to us within the confines of his duties.

Thank you for your interest.

Kind regards

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Mark

In response to your request for further information regarding the medical files of people in immigration detention, I have been provided with the following advice:

The Department does not have in its possession health files relating to health care provided to people being held in immigration detention.

The Health Service Providers (HSPs) are contractually and legislatively required to hold medical records relating to health services they have provided to people in held in immigration detention.

Where a client receives health services from an external health provider, a summary report of the services provided is usually sent to the HSP to be held as part of the clients medical file.

The current HSPs store all health files electronically on their own system to which DIAC does not have access.

DIAC can only receive confidential client health information in specific circumstances where consent has been provided by the client and/or their delegate under the law.

If a person in immigration detention requests a copy or part thereof of their health file, they are able to request this directly from the HSPs.

Regards